

## SECTION 00700 - GENERAL CONDITIONS 2003

1. DEFINITIONS OF TERMS - Whenever the following terms or their pronouns are used in the specifications or in any documents or instruments where these specifications govern, the following definitions of the terms shall apply, unless a different meaning is clearly apparent from the context:

COMPTROLLER - The Comptroller, State of Hawaii, the legally appointed head of the Department of Accounting and General Services.

CONTRACT - The written agreement between the Contractor and the State, including this General Conditions of the Contract and any amendments thereto setting forth the obligations of the parties.

CONTRACTOR - Any individual, partnership, firm, corporation or joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State and acting directly or through his, their or its agents, employers or subcontractors.

DEPARTMENT - The Department of Accounting and General Services, State of Hawaii.

ENGINEER - The State Central Services Division Administrator, acting for the Comptroller, either directly or through an assistant or representative.

INSPECTOR - Authorized representative of the Engineer assigned to make detailed inspections of contract performance and materials supplies.

LAWS - All Federal, State, City and County laws, ordinances, rules and regulations, including any amendments thereto effective as of the date of the contract.

STATE - The State of Hawaii acting through its authorized representative.

SUBCONTRACTOR - An individual, partnership, firm, corporation, joint venture or other legal entity which enters into an agreement with the contractor to perform a portion of the work for the Contractor.

2. INTENT OF CONTRACT - The intent of the contract is to provide for the construction, complete in every detail, of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the plans, specifications and terms of the contract.
3. CHANGES - The Engineer may at any time during the progress of the work make changes in the drawings and/or specifications of the contract as may be found to be necessary or desirable. Any adjustment in the contract amount due to such changes shall

be negotiated and mutually agreed upon.

4. AUTHORITY OF THE ENGINEER - The Engineer shall decide all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and rate of progress of the work, the interpretation of the plans and specifications, the Contractor, the compensation under the contract and the mutual rights of parties to the contract. His decisions upon all questions shall be final and conclusive unless, within twenty (20) consecutive working days from the date of the decision, the contractor files a written appeal to the Comptroller. The decision of the Comptroller shall be final and conclusive.

The Engineer shall have the authority to suspend the work wholly or in part due to failure of the Contractor to correct conditions unsafe for workers or the general public; for failure to carry out provisions of the contract; for failure to carry out orders; for conditions considered unsuitable for the prosecution of the work or for any other condition or reason deemed to be in the public interest.

5. INSPECTION - The Engineer and Inspectors employed by the Department shall at all times have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining at any time that the materials and the workmanship are in accordance with the requirement and intentions of the contract. All work done and all materials furnished shall be subject to inspection and approval.
6. SUBCONTRACTS - Nothing contained in the contract documents shall create a contractual relationship between the Department and any subcontractor.
7. SUBCONTRACTING - Contractor shall perform with its own organization, work amounting to not less than twenty (20%) of the total contract cost, exclusive of costs for materials and equipment the Contractor purchases for installation by its subcontractors.
8. INSURANCE - The Contractor shall obtain and maintain insurance described below which shall provide coverage against claims arising out of the Contractor's operations under the contracts, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable during the life of this contract.

A. Worker's Compensation - The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

B. General Liability – The Contractor shall obtain General Liability insurance with a limit of not less than \$2,000,000 per occurrence and in the Aggregates. The General liability

Insurance shall include the State as an Additional Insured.

C. Auto Liability – The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a Combined single Limit of not less than \$1,000,000 per occurrence.

9. PERMITS AND LICENSES - The Contractor shall procure all required permits and licenses, pay for all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work.
10. COMMENCEMENT REQUIREMENTS – Prior to beginning work on site, the Contractor shall submit the Certificate of Insurance and copies of permit and licenses as required by Item No. 6 and 7 above to the Engineer.
11. TAX CLEARANCE – Contractors are required to provide both state and federal tax clearance as a prerequisite to entering into a public contract of \$25,000 or more. To meet this requirement, all Bidders shall submit valid tax clearances with their bid proposals when the bid is \$25,000 or more. An additional tax clearance will be required before final payment can be made. Only original tax clearance certificates or certified copies will be accepted for this purpose. Failure to submit the required tax clearance certificates may be sufficient grounds for the Department to refuse to receive or consider the prospective bidder's proposal.
12. HOURS OF LABOR - (Section 104-2 Hawaii Revised Statutes) - No laborer or mechanic employed on the job site of any public work of the State or any political subdivision thereof shall be permitted or required to work on Saturday, Sunday or a legal holiday of the State or in excess of eight (8) hours on any other day unless he receives compensation for all hours worked on Saturday, Sunday and a legal holiday of the State or in excess of eight (8) hours on any other day at a rate not less than one and one-half times his basic hourly rate of pay. For the purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the prevailing basic hourly rate determined by the Director of Labor and Industrial Relations for corresponding classes of laborers and mechanics on project.
13. PREVAILING WAGES - (Section 104-2 Hawaii Revised Statutes) - The Contractor or his subcontractor shall pay all mechanics and laborers employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics. The wages stated in the contract shall not be less than the wages which the Director of Labor and Industrial Relations has determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the

State.

The rates of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site and a copy of such wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time he is employed, provided that where there is a collective bargaining agreement, the Contractor does not have to provide his employees the wage rate schedules.

The Comptroller may withhold from the Contractor so much of the accrued payments as the Comptroller may consider necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the job site. The accrued payments withheld shall be the difference between the wages required by this contract or specifications and the wages actually received by such laborers or mechanics.

The above wage rate provisions do not apply to contracts in the amount of \$2,000 or less.

14. FAILURE TO PAY REQUIRED WAGES - (Section 104-4 Hawaii Revised Statutes) - If the Department finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract or specifications, or has not received his full overtime compensation, the Department may, by written notice to the Contractor, terminate his right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor shall be liable to the Department for any excess costs occasioned thereby.
15. PAYROLLS AND PAYROLL RECORDS - (Section 104-3 Hawaii Revised Statutes) - A Certified copy of each weekly payroll shall be submitted to the DAGS Central Services Division within seven (7) calendar days after the end of each weekly payroll period. The Contractor shall be responsible for the submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the current State Wage Schedule and also that the classifications set forth for each laborer and mechanic conform with the work he performed. Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and his subcontractors, if any, during the course of the work and preserved for a period of three (3) years thereafter. Such records shall contain the name of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Such records shall be made available for inspection at a place designated by the Comptroller, the Director of Labor and any authorized persons who may also interview employees during working hours on the job site.

Certified copies of payroll are not required for contracts in the amount of \$2,000 or less.

**Note that the falsification of certifications noted in this section may subject the Contractor or subcontractor to penalties and debarment under the laws and/or criminal prosecution.**

16. OVERTIME AND NIGHT WORK - Overtime work shall be considered as work performed in excess of eight (8) hours in any one day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Engineer in writing, or as called for elsewhere within the specifications.

The Contractor shall inform the Engineer in writing at least two (2) working days in advance as to exactly what specific work is to be done during any overtime and night period to insure that Engineer will be available.

In the event that work other than that contained in the above notification is performed and for which the Engineer determines State inspection services were necessary but not available because of the lack of notification, the Contractor may be required to remove all such work and perform the work in the presence of the Engineer.

Any hours worked in excess of the normal eight (8) working hours per day or on Saturdays, Sundays or legal State holidays will not be considered a working day.

The State hereby reserves the right to cancel the overtime, night, Saturday, Sunday or legal State holiday work when it is found that work during these periods are detrimental to the public welfare or the user agency.

17. LIMITATIONS OF OPERATIONS - The Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with traffic and passageways and he shall have due regard for furnishing convenient detours and providing for the handling of traffic.

In the event that other contractors are also employed on the job site, the Contractor shall arrange his work and dispose of his materials so as not to interfere with the operations of the other contractors engaged upon adjacent work and to join his work to that of others and existing buildings in a proper manner, and in accordance with the spirit of the plans and specifications, and to perform his work in the proper sequence in relation to that of others, all as may be directed by the Engineer.

18. LAWS TO BE OBSERVED - The Contractor at all times shall observe and comply with all federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

The Contractor shall protect and indemnify the State and its Departments and Agencies and all their officers, representatives, employees or agents against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or his subcontractor or the employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Engineer in writing.

Attention is directed to the Hawaii Employment Relations Act, Chapter 377, H.R.S.; Hawaii Employment Security Law, Chapter 383, H.R.S.; Wage and Hour Law, Chapter 387, H.R.S.; Payment of Wages, Chapter 388, H.R.S.; Industrial Safety, Chapter 376, H.R.S.; and Worker's Compensation Law, Chapter 386, H.R.S.

19. PATENTED DEVICES, MATERIALS AND PROCESSES - If the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall indemnify and save harmless the State and its Departments and Agencies, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, shall indemnify the State and its Departments and Agencies for any costs, expenses and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work.
20. SANITARY, HEALTH AND SAFETY PROVISIONS - The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements of the State and local Boards of Health, or other bodies or tribunals having jurisdiction.

Attention is directed to Federal, State and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his health or safety.

21. RESPONSIBILITY FOR DAMAGE CLAIMS - The Contractor shall save harmless the State and its Departments and Agencies and all of their officers, representatives, employees or agents from all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property on account of the operations of Contractor; or in consequence of any neglect in safeguarding the work, or through the use of unacceptable materials in the construction of the improvement, or on account of any act or omission by said Contractor or his agents. The Contractor shall indemnify and hold harmless the State and its Departments and Agencies and all of their officers, representatives, employees, or agents for damages attributable, whether caused in

whole or in part, by any negligence of the Contractor.

The Contractor agrees that he will not hold the State and its Department and Agencies and all their officers, representatives, employees or agents, liable or responsible for any losses or damages to third parties from the action of the elements, the nature of the work to be done under these specifications or from any unforeseen obstructions, acts of God, vandalism, fires or encumbrances which may be encountered in the prosecution of the work.

The Contractor guarantees the payment of all just claims for materials, supplies, tools, labor and other just claims against him or any subcontractor in connection with this contract and his bond will not be released by final acceptance and payment by the Department unless all such claims are paid or released, or so much of the monies due or to become due the Contractor, under this contract as shall be considered necessary by the Engineer may be retained by the Engineer.

The Contractor shall save harmless the State and its Departments and Agencies and all their officers, representatives, employees or agents from all suits, actions or claims of any character brought on account of any claims or amounts arising or recovered under the Workers Compensation Laws or any other law, by-law, ordinance, or order or decree.

Should any suit or claim be filed against the Contractor, the Engineer shall retain, from any monies due to the Contractor such amount or amounts as may be deemed necessary by the said Engineer to satisfy the suit or claim, until such suits or claims have been finally settled and determined, and upon satisfactory evidence of such settlement of such suits or claims, the money retained shall be paid to the Contractor.

22. PERSONAL LIABILITY OR PUBLIC OFFICIALS - In carrying out any of the above provisions or in exercising any power or authority granted to him by this contract, there shall be no liability upon said Comptroller or his authorized assistants, either personally or as an official of the State, it being understood that in such matters, he acts as the agent and representative of the State.
23. DISPUTES - In the case the Contractor deems that extra compensation is due him for work or materials not clearly covered in the contract, or not ordered by the Engineer as an extra, the Contractor shall notify the Engineer in writing of his intention to make claim and shall afford the Engineer every facility for keeping records of the actual cost of the work. Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When the work has been completed, the Contractor shall within ten (10) consecutive working days thereafter file this claim in writing for extra compensation with the Engineer who will review the claim and render his decision. His decision shall be final

and conclusive unless, within twenty (20) consecutive working days from the date of the decision, the Contractor mails or otherwise furnishes a written appeal to the Comptroller. The decision of the Comptroller shall be final.

Should a dispute occur, the Contractor shall follow the procedure outlined above and diligently continue the work. Time extension will not be granted the contractor for temporarily halting his operation due to dispute.

24. GUARANTEE OF WORK - Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of defective or inferior materials, equipment or workmanship for one year or as otherwise noted in the technical specifications from the date of beneficial occupancy or project acceptance of the contract whichever is earlier. All guarantee of work shall be transmitted in writing.
25. PROGRESS PAYMENTS - Payments to the Contractor shall be by purchase order and the maximum number of progress payments shall be as follows:
  - a. Amount \$5,000 or less - 1 payment only after 100% completion and acceptance by the Engineer.
  - b. Amount \$10,000 or less - but more than \$5,000 2 payments; the first payment only after more than 50% completion; the second payment only after 100% completion and acceptance by the Engineer.
  - c. Amount \$100,000 or less - but more than \$10,000 3 payments; the first payment only after more than 35% completion; the second payment only after more than 70% completion; and third and final payment only after 100% completion and acceptance by the Engineer.
26. FINAL PAYMENT - Final payment shall be made when the work provided for by the contract shall have been completely performed on the part of the Contractor and all parts of the work having been approved and accepted by the Engineer; provided the Contractor has submitted the following:
  - a. For contracts in the amount of \$2,000 or more, certified payroll records for the duration of the project.
  - b. For contracts in the amount of \$25,000 or more, valid original Tax clearances with both State and Federal clearance stamps from the Department of Taxation.
27. PROMPT PAYMENT - (Section 103-10.5 Hawaii Revised Statutes) - Any money, other

than retainage, paid to a Contractor shall be dispersed to subcontractors within ten (10) consecutive calendar days after receipt of the money in accordance with the terms of the subcontract, provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes. Upon final payment to the Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) consecutive calendar days after receipt of the money, provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

28. FINAL ACCEPTANCE - The contract will be considered accepted when all work has been fully completed and all required documents have been submitted.
29. TERMINATION FOR CONVENIENCE OF THE STATE - The State, through the Comptroller, may terminate this contract, in whole or in part, for its convenience at any time by giving the contractor ten (10) days written notice of its intent. In such event, the Contractor shall be reimbursed for the actual cost expended in the performance of this contract, prior to the date of termination, as determined by the Engineer; the intent being that an equitable settlement shall be made with the Contractor. No claim for loss of anticipated profits shall be permitted.

#### END OF GENERAL CONDITIONS OF THE CONTRACT